

PROVISIONS RELATING TO HIGH-LEVEL**NUCLEAR WASTE**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

This act modifies the Environmental Quality Code, the County Land Use Development and Management Act, the Labor Code regarding drug and alcohol testing, and the Water and Irrigation Code regarding determination of water rights. The act prohibits the placement of high-level nuclear waste or greater than class C radioactive waste within the exterior borders of the state, and prohibits governmental entities or businesses from providing services to facilitate the placement of the waste in the state. However, should the federal government authorize such placement, the act requires mandatory planning by the site county, including a public hearing. The act provides that an entity may not apply for a state license for the transportation, transfer, or storage of high-level nuclear waste or greater than class C radioactive waste until a final court ruling is given regarding the state provisions. The act also prohibits a county from providing municipal-type services to a site under consideration for a facility, entering into contracts to provide the services, or creating political subdivisions to provide the services until a license is authorized. The act provides that persons or organizations acting in violation of these provisions are subject to penalties. The act requires the Department of Environmental Quality to determine the amount of unfunded potential liability regarding a release of the waste from a facility. Should a facility gain a license, the act imposes on any organization providing municipal-type services a transaction fee of 75% of the value of a contract. This fee is to be applied to the unfunded potential liability and is to be deposited in a restricted account created by this act. In addition, the license applicant is required to deposit in this account not less than 75% of the determined unfunded potential liability within 30 days of issuance of the license for the facility. The licensee is also required to pay an annual fee of the amount of workers'



28 **compensation to be paid for employees in the state, multiplied by the number of casks of**
 29 **nuclear waste brought into the state. This fee is also to be deposited in the account. The fee**
 30 **does not exempt the licensee from payments for workers' compensation, also. The act also**
 31 **requires the licensee to test employees for drug and alcohol, to protect the safety of the**
 32 **public. The act also provides for the state engineer to file an action in court to determine**
 33 **water rights for any area within the state's exterior boundaries regarding which any entity**
 34 **is actively seeking a license for a nuclear waste facility. This act takes effect upon approval.**

35 This act affects sections of Utah Code Annotated 1953 as follows:

36 AMENDS:

- 37 **17-27-102**, as last amended by Chapter 93, Laws of Utah 1992
- 38 **17-27-301**, as last amended by Chapter 34, Laws of Utah 2000
- 39 **17-27-303**, as last amended by Chapter 23, Laws of Utah 1992
- 40 **17-34-1**, as repealed and reenacted by Chapter 199, Laws of Utah 2000
- 41 **19-3-301**, as last amended by Chapter 348, Laws of Utah 1998
- 42 **19-3-302**, as enacted by Chapter 348, Laws of Utah 1998
- 43 **19-3-303**, as enacted by Chapter 348, Laws of Utah 1998
- 44 **19-3-309**, as enacted by Chapter 348, Laws of Utah 1998
- 45 **19-3-312**, as enacted by Chapter 348, Laws of Utah 1998
- 46 **34-38-3**, as enacted by Chapter 234, Laws of Utah 1987
- 47 **73-4-1**, Utah Code Annotated 1953

48 ENACTS:

- 49 **19-3-319**, Utah Code Annotated 1953

50 *Be it enacted by the Legislature of the state of Utah:*

51 Section 1. Section **17-27-102** is amended to read:

52 **17-27-102. Purpose.**

53 (1) To accomplish the purpose of this chapter, and in order to provide for the health,
 54 safety, and welfare, and promote the prosperity, improve the morals, peace and good order,
 55 comfort, convenience, and aesthetics of the county and its present and future inhabitants and
 56 businesses, to protect the tax base, secure economy in governmental expenditures, foster the state's
 57 agricultural and other industries, protect both urban and nonurban development, and to protect
 58 property values, counties may enact all ordinances, resolutions, and rules that they consider

59 necessary for the use and development of land within the county, including ordinances, resolutions,
60 and rules governing uses, density, open spaces, structures, buildings, energy-efficiency, light and
61 air, air quality, transportation and public or alternative transportation, infrastructure, public
62 facilities, vegetation, and trees and landscaping, unless those ordinances, resolutions, or rules are
63 expressly prohibited by law.

64 (2) A county shall comply with the mandatory provisions of this part before any agreement
65 or contract to provide goods, services, or municipal-type services to any storage facility or transfer
66 facility for high-level nuclear waste, or greater than class C radioactive waste, may be executed
67 or implemented.

68 Section 2. Section **17-27-301** is amended to read:

69 **17-27-301. General plan.**

70 (1) In order to accomplish the purposes set forth in this chapter, each county shall prepare
71 and adopt a comprehensive general plan for:

72 (a) the present and future needs of the county; and

73 (b) the growth and development of the land within the county or any part of the county,
74 including uses of land for urbanization, trade, industry, residential, agricultural, wildlife habitat,
75 and other purposes.

76 (2) The plan may provide for:

77 (a) health, general welfare, safety, energy conservation, transportation, prosperity, civic
78 activities, aesthetics, and recreational, educational, and cultural opportunities;

79 (b) the reduction of the waste of physical, financial, or human resources that result from
80 either excessive congestion or excessive scattering of population;

81 (c) the efficient and economical use, conservation, and production of the supply of:

82 (i) food and water; and

83 (ii) drainage, sanitary, and other facilities and resources;

84 (d) the use of energy conservation and solar and renewable energy resources;

85 (e) the protection of urban development;

86 (f) the protection and promotion of air quality; and

87 (g) an official map, pursuant to Title 72, Chapter 5, Part 4, Transportation Corridor

88 Preservation.

89 (3) The plan shall include specific provisions related to any areas within, or partially

90 within, the exterior boundaries of the county, or contiguous to the boundaries of a county, which
91 are proposed for the siting of a storage facility or transfer facility for the placement of high-level
92 nuclear waste or greater than class C radioactive nuclear waste. The provisions shall address the
93 effects of the proposed site upon the health and general welfare of citizens of the state, and shall
94 provide:

95 (a) the information identified in Section 19-3-305;

96 (b) information supported by credible studies that demonstrates that the provisions of
97 Subsection 19-3-307(2) have been satisfied; and

98 (c) specific measures to mitigate the effects of high-level nuclear waste and greater than
99 class C radioactive waste and guarantee the health and safety of the citizens of the state.

100 [~~3~~] (4) The plan may define the county's local customs, local culture, and the components
101 necessary for the county's economic stability.

102 [~~4~~] (5) The county may determine the comprehensiveness, extent, and format of the
103 general plan.

104 Section 3. Section **17-27-303** is amended to read:

105 **17-27-303. Plan adoption.**

106 (1) (a) After completing a proposed general plan for all or part of the area within the
107 county, the planning commission shall schedule and hold a public hearing on the proposed plan.

108 (b) The planning commission shall provide reasonable notice of the public hearing at least
109 14 days before the date of the hearing.

110 (c) After the public hearing, the planning commission may make changes to the proposed
111 general plan.

112 (2) The planning commission shall then forward the proposed general plan to the
113 legislative body.

114 (3) (a) The legislative body shall hold a public hearing on the proposed general plan
115 recommended to it by the planning commission.

116 (b) The legislative body shall provide reasonable notice of the public hearing at least 14
117 days before the date of the hearing.

118 (4) (a) (i) In addition to the requirements of Subsections (1), (2), and (3), the legislative
119 body shall hold a public hearing in Salt Lake City on provisions of the proposed county plan
120 regarding Subsection 17-27-301(3). The hearing procedure shall comply with this Subsection (4).

121 (ii) The hearing format shall allow adequate time for public comment at the actual public
122 hearing, and shall also allow for public comment in writing to be submitted to the legislative body
123 for not fewer than 90 days after the date of the public hearing.

124 (b) (i) The legislative body shall give notice of the hearing in accordance with this
125 Subsection (4) when the proposed plan provisions required by Subsection 17-27-301(3) are
126 complete.

127 (ii) Direct notice of the hearing shall be given, in writing, to the governor, members of the
128 state Legislature, executive director of the Department of Environmental Quality, the state
129 planning coordinator under Section 63-28-1, the Resource Development Coordinating Committee
130 pursuant to Section 63-28a-2, and any other citizens or entities who specifically request notice in
131 writing.

132 (iii) Public notice shall be given by publication in at least one major Utah newspaper
133 having broad general circulation in the state, and also in at least one Utah newspaper having a
134 general circulation focused mainly on the county where the proposed high-level nuclear waste or
135 greater than class C radioactive waste site is to be located.

136 (iv) The notice in these newspapers shall be published not fewer than 180 days prior to
137 the date of the hearing to be held under this Subsection (4), to allow reasonable time for interested
138 parties and the state to evaluate the information regarding the provisions of Subsection
139 17-27-301(3).

140 ~~[(4)]~~ (5) (a) After ~~[the]~~ a public hearing under this section, the legislative body may make
141 any modifications to the proposed general plan that it considers appropriate.

142 (b) The legislative body shall respond in writing and in a substantive manner to all those
143 providing comments as a result of the hearing required by Subsection (4).

144 ~~[(5)]~~ (6) The legislative body may:

145 (a) adopt the proposed general plan without amendment;

146 (b) amend the proposed general plan and adopt or reject it as amended; or

147 (c) reject the proposed general plan.

148 ~~[(6)]~~ (7) (a) The general plan is an advisory guide for land use decisions, except for the
149 provision required by Subsection 17-27-301(3), which the legislative body shall adopt.

150 (b) The legislative body may adopt an ordinance mandating compliance with the general
151 plan, and shall adopt an ordinance requiring compliance with all provisions of Subsection

152 17-27-301(3).

153 Section 4. Section **17-34-1** is amended to read:

154 **17-34-1. Counties may provide municipal services -- First class counties required to**
155 **provide paramedic services.**

156 (1) For purposes of this chapter, [~~"municipal-type~~] except as otherwise provided in
157 Subsection (3):

158 (a) "Greater than class C radioactive waste" has the same meaning as in Section 19-3-303.

159 (b) "High-level nuclear waste" has the same meaning as in Section 19-3-303.

160 (c) "Municipal-type services" means:

161 [~~(a)~~] (i) fire protection service;

162 [~~(b)~~] (ii) waste and garbage collection and disposal;

163 [~~(c)~~] (iii) planning and zoning;

164 [~~(d)~~] (iv) street lighting;

165 [~~(e)~~] (v) in a county of the first class, advanced life support and paramedic services; and

166 [~~(f)~~] (vi) all other services and functions that are required by law to be budgeted,

167 appropriated, and accounted for from a municipal services fund or a municipal capital projects

168 fund as defined under Chapter 36, Uniform Fiscal Procedures Act for Counties.

169 (d) "Placement" has the same meaning as in Section 19-3-303.

170 (e) "Storage facility" has the same meaning as in Section 19-3-303.

171 (f) "Transfer facility" has the same meaning as in Section 19-3-303.

172 (2) A county may:

173 (a) provide municipal-type services to areas of the county outside the limits of cities and
174 towns without providing the same services to cities or towns;

175 (b) fund those services by:

176 (i) levying a tax on taxable property in the county outside the limits of cities and towns;

177 or

178 (ii) charging a service charge or fee to persons benefitting from the municipal-type
179 services.

180 (3) A county may not:

181 (a) provide, contract to provide, or agree in any manner to provide municipal-type services,

182 as these services are defined in Section 19-3-303, to any area under consideration for a storage

183 facility or transfer facility for the placement of high-level nuclear waste, or greater than class C
184 radioactive waste; or

185 (b) seek to fund services for these facilities by:

186 (i) levying a tax; or

187 (ii) charging a service charge or fee to persons benefitting from the municipal type
188 services.

189 ~~[(3)]~~ (4) Each county of the first class shall provide advanced life support and paramedic
190 services to the area of the county outside the limits of cities and towns.

191 Section 5. Section **19-3-301** is amended to read:

192 **19-3-301. Restrictions on nuclear waste placement in state.**

193 (1) The [state may not approve the] placement, including transfer, storage, decay in
194 storage, treatment, or disposal, [in] within the exterior boundaries of Utah of high-level nuclear
195 waste or greater than class C radioactive waste [unless] is prohibited.

196 (2) Notwithstanding Subsection (1) the governor, after consultation with the county
197 executive and county legislative body of the affected county and with concurrence of the
198 Legislature, may specifically [approves] approve the placement as provided in this part[-], but only
199 if:

200 (a) (i) the federal Nuclear Regulatory Commission issues a license, pursuant to the Nuclear
201 Waste Policy Act, 42 U.S.C.A. 10101 et seq., or the Atomic Energy Act, 42 U.S.C.A. 2011 et seq.,
202 for the placement within the exterior boundaries of Utah of high-level nuclear waste or greater than
203 class C radioactive waste; and

204 (ii) the authority of the federal Nuclear Regulatory Commission to grant a license under
205 Subsection (2)(a)(i) is clearly upheld by a final judgment of a court of competent jurisdiction; or

206 (b) an agency of the federal government is transporting the waste, and all state and federal
207 requirements to proceed with the transportation have been met.

208 (3) The requirement for the approval of a final court of competent jurisdiction shall be met
209 in all of the following categories, in order for a state license proceeding regarding waste to begin:

210 (a) transfer or transportation, by rail, truck, or other mechanisms;

211 (b) storage, including any temporary storage at a site away from the generating reactor;

212 (c) decay in storage;

213 (d) treatment; and

214 (e) disposal.

215 (4) (a) Upon satisfaction of the requirements of Subsection (2)(a), for each category listed
216 in Subsection (3), or satisfaction of the requirements under Subsection (2)(b), the governor, with
217 the concurrence of the attorney general, shall certify in writing to the executive director of the
218 Department of Environmental Quality that all of the requirements have been met, and that any
219 necessary state licensing processes may begin.

220 (b) Separate certification under this Subsection (4) shall be given for each category in
221 Subsection (3).

222 (5) (a) The department shall make, by rule, a determination of the dollar amount of the
223 health and economic costs expected to result from a reasonably foreseeable accidental release of
224 waste involving a transfer facility or storage facility, or during transportation of waste, within the
225 exterior boundaries of the state. The department may initiate rulemaking under this Subsection
226 (5)(a) on or after the effective date of this act.

227 (b) (i) The department shall also determine the dollar amount currently available to cover
228 the costs as determined in Subsection (5)(a):

229 (A) under nuclear industry self-insurance;

230 (B) under federal insurance requirements; and

231 (C) in federal monies.

232 (ii) The department may not include any calculations of federal monies that may be
233 appropriated in the future in determining the amount under Subsection (5)(b)(i).

234 (c) The department shall use the information compiled under Subsections (5)(a) and (b)
235 to determine the amount of unfunded potential liability in the event of a release of waste from a
236 storage or transfer facility, or a release during the transportation of waste.

237 (6) State agencies and political subdivisions of the state may not, for the purpose of
238 providing any goods, services, or municipal-type services to a storage facility or transfer facility,
239 or to any organization engaged in the transportation of waste, enter into any contracts or any other
240 agreements, or negotiate regarding proposed provisions of any proposed or anticipated contracts
241 or other agreements prior to:

242 (a) the satisfaction of the conditions in Subsection (4); and

243 (b) the executive director of the department having certified that the requirements of
244 Sections 19-3-304 through 19-3-308 have been met for the purposes of a license application

245 proceeding for a storage facility or transfer facility.

246 (7) (a) Notwithstanding any other provision of law, any political subdivision may not be
247 formed pursuant to the laws of Utah for the purpose of providing any goods, services, or
248 municipal-type services to a storage facility or transfer facility prior to the satisfaction of the
249 conditions in Subsection (4). These political subdivisions include:

250 (i) a cooperative;

251 (ii) a special district authorized by Title 17A, Special Districts;

252 (iii) a limited purpose local governmental entities authorized by Title 17, Counties;

253 (iv) any joint power agreement authorized by Title 11, Cities, Counties, and Local Taxing
254 Units; and

255 (v) the formation of a municipality, or any authority of a municipality authorized by Title
256 10, Utah Municipal Code.

257 (b) (i) Subsections (6) and (7)(a) shall be strictly interpreted. Any political subdivision
258 authorized and formed under the laws of the state after the effective date of this act which
259 subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or
260 municipal-type services to a storage facility or transfer facility is formed in violation of Subsection
261 (7)(a).

262 (ii) If the conditions of Subsection (7)(b)(i) apply, the persons who formed the political
263 subdivision are considered to have knowingly violated a provision of this part, and the penalties
264 of Section 19-3-312 apply.

265 (8) (a) An organization may not be formed for the purpose of providing any goods,
266 services, or municipal-type services to a storage facility or transfer facility prior to:

267 (i) the satisfaction of the conditions in Subsection (4); and

268 (ii) the executive director of the department having certified that the requirements of
269 Sections 19-3-304 through 19-3-308 have been met.

270 (b) A foreign organization may not be registered to do business in the state for the purpose
271 of providing any goods, services, or municipal-type services to a storage facility or transfer facility
272 prior to:

273 (i) the satisfaction of the conditions in Subsection (4); and

274 (ii) the executive director of the department having certified that the requirements of
275 Sections 19-3-304 through 19-3-308 have been met.

276 (c) The prohibitions of Subsections (8)(a) and (b) shall be strictly applied, and:

277 (i) the formation of a new organization or registration of a foreign organization within the
278 state, any of whose purposes are to provide goods, services, or municipal-type services to a storage
279 facility or transfer facility may not be licensed or registered in the state, and the local or foreign
280 organization is void and does not have authority to operate within the state;

281 (ii) any organization which is formed or registered after the effective date of this act, and
282 which subsequently contracts to, or in any manner agrees to provide, or does provide goods,
283 services, or municipal-type services to a storage facility or transfer facility has been formed or
284 registered in violation of Subsection (8)(a) or (b) respectively; and

285 (iii) if the conditions of Subsection (8)(c)(ii) apply, the persons who formed the
286 organization or the principals of the foreign organization, are considered to have knowingly
287 violated a provision of this part, and are subject to the penalties in Section 19-3-312.

288 (9) (a) (i) Any contract or agreement to provide any goods, services, or municipal-type
289 services to any organization engaging in, or attempting to engage in the placement of high-level
290 nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility
291 within the state are declared to be against the greater public interest, health, and welfare of the
292 state, by promoting an activity which has the great potential to cause extreme public harm.

293 (ii) These contracts or agreements under Subsection (9)(a)(i), whether formal or informal,
294 are declared to be void from inception, agreement, or execution as against public policy.

295 (b) (i) Any contract or other agreement to provide goods, services, or municipal-type
296 services to storage or transfer facilities may not be executed within the state.

297 (ii) Any contract or other agreement, existing or executed after the effective date of this
298 act, is considered void from the time of agreement or execution.

299 (10) (a) All contracts and agreements under Subsection (10)(b) are assessed an annual
300 transaction fee of 75% of the gross value of the contract to the party providing the goods, services,
301 or municipal-type services to the storage facility or transfer facility or transportation entity. The
302 fee shall be assessed per calendar year, and is payable to the department on a prorated basis on or
303 before the last day of each month.

304 (b) Contracts and agreements subject to the fee under Subsection (10)(a) are those
305 contracts and agreements to provide goods, services, or municipal-type services to a storage or
306 transfer facility, or to any organization engaged in the transportation of high-level nuclear waste

307 or greater than class C radioactive waste, and which:

308 (i) are in existence on the effective date of this act; or

309 (ii) become effective notwithstanding Subsection (9)(a).

310 (c) Any governmental agency which is affected by the provisions of Subsection (10)(b)

311 and which regulates the charges to consumers for services provided by utilities or other

312 organizations regulated by a governmental agency shall require of the regulated organization that

313 the fees under Subsection (10)(a) be included in the costs of the services to consumers.

314 (d) The department, in consultation with the State Tax Commission, shall establish rules

315 for the valuation of the contracts and assessment and collection of the fees, and other rules as

316 necessary to determine the amount of and collection of the fee under Subsection (10)(a).

317 Section 6. Section **19-3-302** is amended to read:

318 **19-3-302. Legislative intent.**

319 (1) (a) The state of Utah enacts this part to prevent the placement of any high-level nuclear

320 waste or greater than class C radioactive waste in Utah. The state also recognizes that high-level

321 nuclear waste or greater than class C radioactive waste may be placed within the exterior

322 boundaries of the state, pursuant to a license from the federal government, or by the federal

323 government itself, in violation of this state law.

324 (b) Due to this possibility, the state also enacts provisions in this part to regulate

325 transportation, transfer, storage, decay in storage, treatment, and disposal of any high-level nuclear

326 waste and greater than class C radioactive waste in Utah, thereby asserting and protecting the

327 state's interests in environmental and economic resources consistent with 42 U.S.C.A. 2011 et seq.,

328 Atomic Energy Act and 42 U.S.C.A. 10101 et seq., Nuclear Waste Policy Act, should the federal

329 government decide to authorize any entity to operate, or operate itself, in violation of this state law.

330 (2) Neither the Atomic Energy Act nor the Nuclear Waste Policy Act provides for siting

331 a large privately owned high-level nuclear waste transfer, storage, decay in storage, or treatment

332 facility away from the vicinity of the reactors. The Atomic Energy Act and the Nuclear Waste

333 Policy Act specifically define authorized storage and disposal programs and activities. The state

334 of Utah in enacting this part is not preempted by federal law, since any proposed facilities that

335 would be sited in Utah are not contemplated or authorized by federal law and, in any circumstance,

336 this part is not contrary to or inconsistent with federal law or Congressional intent.

337 (3) The state of Utah has environmental and economic interests which do not involve

338 nuclear safety regulation, and which must be considered and complied with in siting a high-level
339 nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage,
340 treatment, or disposal facility and in transporting these wastes in the state.

341 (4) An additional primary purpose of this part is to ensure protection of the state from
342 nonradiological hazards associated with any waste transportation, transfer, storage, decay in
343 storage, treatment, or disposal.

344 (5) The state recognizes the sovereign rights of Indian tribes within the state of Utah.
345 However, any proposed transfer, storage, decay in storage, treatment, or disposal facility located
346 on a reservation which directly affects and impacts state interests by creating off-reservation effects
347 such as potential or actual degradation of soils and groundwater, potential or actual contamination
348 of surface water, pollution of the ambient air, emergency planning costs, impacts on development,
349 agriculture, and ranching, and increased transportation activity, is subject to state jurisdiction.

350 (6) There is no tradition of regulation by the Indian tribes in Utah of high-level nuclear
351 waste or higher than class C radioactive waste. The state does have a long history of regulation
352 of radioactive sources and natural resources and in the transfer, storage, treatment, and
353 transportation of materials and wastes throughout the state. The state finds that its interests are
354 even greater when nonmembers of an Indian tribe propose to locate a facility on tribal trust lands
355 primarily to avoid state regulation and state authorities under federal law.

356 (7) (a) This part is not intended to modify existing state requirements for obtaining
357 environmental approvals, permits, and licenses, including surface and groundwater permits and
358 air quality permits, when the permits are necessary under state and federal law to construct and
359 operate a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay
360 in storage, treatment, or disposal facility.

361 (b) Any source of air pollution proposed to be located within the state, including sources
362 located within the boundaries of an Indian reservation, which will potentially or actually have a
363 direct and significant impact on ambient air within the state, is required to obtain an approval order
364 and permit from the state under Section 19-2-108.

365 (c) Any facility which will potentially or actually have a significant impact on the state's
366 surface or groundwater resources is required to obtain a permit under Section 19-5-107 even if
367 located within the boundaries of an Indian reservation.

368 (8) The state finds that the transportation, transfer, storage, decay in storage, treatment, and

369 disposal of high-level nuclear waste and greater than class C radioactive waste within the state is
370 an ultra-hazardous activity which carries with it the risk that any release of waste may result in
371 enormous economic and human injury.

372 Section 7. Section **19-3-303** is amended to read:

373 **19-3-303. Definitions.**

374 As used in this part:

375 (1) "Final judgment" means a final ruling or judgment, including any supporting opinion,
376 that determines the rights of the parties and concerning which all appellate remedies have been
377 exhausted or the time for appeal has expired.

378 (2) "Goods" means any materials or supplies, whether raw, processed, or manufactured.

379 ~~[(H)]~~ (3) "Greater than class C radioactive waste" means low-level radioactive waste that
380 has higher concentrations of specific radionuclides than allowed for class C waste.

381 ~~[(Z)]~~ (4) "High-level nuclear waste" has the same meaning as in Section 19-3-102.

382 (5) "Municipal-type services includes, but is not limited to:

383 (a) fire protection service;

384 (b) waste and garbage collection and disposal;

385 (c) planning and zoning;

386 (d) street lighting;

387 (e) life support and paramedic services;

388 (f) water;

389 (g) sewer;

390 (h) electricity;

391 (i) natural gas or other fuel; or

392 (j) law enforcement.

393 (6) "Organization" means a corporation, limited liability company, partnership, limited
394 liability partnership, joint venture, consortium, association, trust, or other entity formed to
395 undertake an enterprise, whether or not for profit.

396 (7) "Placement" means transportation, transfer, storage, decay in storage, treatment, or
397 disposal.

398 (8) "Political subdivision" means any county, city, town, school district, public transit
399 district, redevelopment agency, special improvement or taxing district, or other governmental

400 subdivision or public corporation.

401 [~~(3)~~] (9) "Rule" means a rule made by the department under Title 63, Chapter 46a, Utah
402 Administrative Rulemaking Act.

403 (10) "Service" or "services" means any work or governmental program which provides a
404 benefit.

405 [~~(4)~~] (11) "Storage facility" means any facility which stores, holds, or otherwise provides
406 for the emplacement of waste regardless of the intent to recover that waste for subsequent use,
407 processing, or disposal.

408 [~~(5)~~] (12) "Transfer facility" means any facility which transfers waste from and between
409 transportation modes, vehicles, cars, or other units, and includes rail terminals and intermodal
410 transfer points.

411 [~~(6)~~] (13) "Waste" or "wastes" means high-level nuclear waste and greater than class C
412 radioactive waste.

413 Section 8. Section **19-3-309** is amended to read:

414 **19-3-309. Restricted account.**

415 (1) There is created within the General Fund a restricted account known as the "Nuclear
416 Waste Facility Oversight Account[~~:-~~]," and referred to in this section as the "oversight account."

417 (2) (a) The oversight account shall be funded from the fees imposed and collected under
418 [~~this part~~] Subsections 19-3-308(1)(a) and(b).

419 (b) The department shall deposit in the oversight account all fees collected under [~~this part~~
420 ~~in the account~~] Subsections 19-3-308(1)(a) and(b).

421 (c) The Legislature may appropriate the funds in this oversight account to departments of
422 state government as necessary for those departments to carry out their duties to implement this
423 part.

424 [~~(d) The account shall earn interest, which shall be deposited in the account.]~~

425 (3) (a) There is created within the General Fund a restricted account known as the "Nuclear
426 Accident and Hazard Compensation Account, " to be referred to as the "compensation account"
427 within this part.

428 (b) The compensation account shall be funded from the fees assessed and collected under
429 this part, except for Subsections 19-3-308(1)(a) and(b).

430 (c) The department shall deposit in the compensation account all fees collected under this

431 part on and after the date of the actual issuance of a license for a storage facility or transfer facility
432 under this part, except for those fees under Subsections 19-3-308(1)(a) and(b).

433 (d) The compensation account shall earn interest, which shall be deposited in the account.

434 (e) The Legislature may appropriate the funds in the compensation account to the
435 departments of state government as necessary for those departments to comply with the
436 requirements of this part.

437 (4) On the date when a state license is issued in accordance with Subsection
438 19-3-301(4)(a), the Division of Finance shall transfer all fees remaining in the oversight account
439 attributable to that license into the compensation account.

440 Section 9. Section **19-3-312** is amended to read:

441 **19-3-312. Enforcement -- Penalties.**

442 (1) When the department or the governor has probable cause to believe a person is
443 violating or is about to violate any provision of this part, the department or the governor shall
444 direct the state attorney general to apply to the appropriate court for an order enjoining the person
445 from engaging in or continuing to engage in the activity.

446 (2) In addition to being subject to injunctive relief, any person who violates any provision
447 of this part is subject to a civil penalty of up to \$10,000 per day for each violation.

448 (3) Any person who knowingly violates a provision of this part is guilty of a class A
449 misdemeanor and subject to a fine of up to \$10,000 per day.

450 (4) Any person or organization acting to facilitate a violation of any provision of this part
451 regarding the regulation of greater than class C radioactive waste or high-level nuclear waste is
452 subject to a civil penalty of up to \$10,000 per day for each violation, in addition to being subject
453 to injunctive relief.

454 (5) Any person or organization who knowingly acts to facilitate a violation of this part
455 regarding the regulation of high-level nuclear waste or greater than class C radioactive waste is
456 guilty of a class A misdemeanor and is subject to a fine of up to \$10,000 per day.

457 Section 10. Section **19-3-319** is enacted to read:

458 **19-3-319. State response to nuclear release and hazards.**

459 (1) The state finds that the placement of high-level nuclear waste inside the exterior
460 boundaries of the state is an ultra-hazardous activity which may result in catastrophic economic
461 and environmental damage and irreparable human injury in the event of a release of waste, and

462 which release may result in serious long-term health effects to workers at any transfer or storage
463 facility, or to workers involved in the transportation of the waste.

464 (2) (a) The state finds that procedures for providing funding for the costs incurred by any
465 release of waste, or for the compensation for the costs of long-term health effects are not
466 adequately addressed by existing law.

467 (b) Due to these concerns, the state has established a restricted account under Subsection
468 19-3-309(3), known as the Nuclear Accident and Hazard Compensation Account, and referred to
469 in this section as the "compensation account." One of the purposes of this account is to partially
470 or wholly compensate workers for these potential costs, as funds are available and appropriated
471 for these purposes.

472 (3) (a) The department shall require the applicant, and parent and subsidiary organizations
473 of the applicant, to pay to the department not less than 75% of the unfunded potential liability, as
474 determined under Subsection 19-3-301(5), in the form of cash or cash equivalents. The department
475 shall deposit the payments into the compensation account within 30 days after the date of the
476 issuance of a license under this part.

477 (b) The department shall credit the amount paid pursuant to this Subsection (3) against the
478 amount due under Subsection 19-3-306(10).

479 (c) If the payments due under this Subsection (3) are not made within 30 days, as required,
480 the executive director of the department shall cancel the license.

481 (4) (a) The department shall also require an annual fee from the holder of any license
482 issued under this part. This annual fee payment shall be calculated as:

483 (i) the amount of the annual payments required by Title 34A, Chapter 2, Workers'
484 Compensation Act, of the licensee and of all parties contracted to provide goods, services, or
485 municipal-type services to the licensee, regarding their employees who are working within the state
486 at any time during the calendar year; and

487 (ii) multiplied by the number of storage casks of waste present at any time and for any
488 period of time within the exterior borders of the state during the year for which the fee is assessed.

489 (b) (i) The licensee shall pay the fee under Subsection (4)(a) to the department. The
490 department shall deposit the fee in the compensation account created in Subsection 19-3-309(3).

491 (ii) The fee shall be paid to the department on or before March 31 of each calendar year.

492 (5) The department shall use the fees paid under Subsection (4) to provide medical or

493 death benefits, or both, as is appropriate to the situation, to:

494 (a) any employee of the holder of any license issued under this part, or employees of any
495 parties contracting to provide goods, services, transportation, or municipal-type services to the
496 licensee, if the employee is within the state at any time during the calendar year as part of his
497 employment; or

498 (b) that employee's family or beneficiaries.

499 (6) Payment of the fee under Subsection (4) does not exempt the licensee from compliance
500 with any other provision of law, including Title 34A, Chapter 2, regarding workers' compensation.

501 (7) (a) An agreement between an employer and an employee, the employee's family, or
502 beneficiaries requiring the employee to waive benefits under this section, requiring the employee
503 to seek third party coverage, or requiring an employee contribution is void.

504 (b) Any employer attempting to secure any agreement prohibited under Subsection (7)(a)
505 is subject to the penalties of Section 19-3-312.

506 (8) (a) The department, in consultation with the Division of Industrial Accidents within
507 the Labor Commission, shall by rule establish procedures regarding application for benefits,
508 standards for eligibility, estimates of annual payments, and payments.

509 (b) Payments under this section are in addition to any other payments or benefits allowed
510 by state or federal law, notwithstanding provisions in Title 34A, Chapter 2, regarding workers'
511 compensation.

512 (c) Payments or obligations to pay under this section may not exceed funds appropriated
513 for these purposes by the Legislature.

514 Section 11. Section **34-38-3** is amended to read:

515 **34-38-3. Testing for drugs or alcohol.**

516 (1) It is not unlawful for an employer to test employees or prospective employees for the
517 presence of drugs or alcohol, in accordance with the provisions of this chapter, as a condition of
518 hiring or continued employment. However, employers and management in general [~~must~~] shall
519 submit to the testing themselves on a periodic basis.

520 (2) (a) Any organization which is operating a storage facility or transfer facility or which
521 is engaged in the transportation of high-level nuclear waste or greater than class C radioactive
522 waste within the exterior boundaries of the state shall establish a mandatory drug testing program
523 regarding drugs and alcohol for prospective and existing employees as a condition of hiring any

524 employee or the continued employment of any employee. As a part of the program, employers and
525 management in general shall submit to the testing themselves on a periodic basis. The program
526 shall implement testing standards and procedures established under Subsection (2)(b).

527 (b) The executive director of the Department of Environmental Quality, in consultation
528 with the Labor Commission under Section 34A-1-103, shall by rule establish standards for timing
529 of testing and dosage for impairment for the drug and alcohol testing program under this
530 Subsection (2). The standards shall address the protection of the safety, health, and welfare of the
531 public.

532 Section 12. Section **73-4-1** is amended to read:

533 **73-4-1. By engineer on petition of users.**

534 (1) Upon a verified petition to the state engineer, signed by five or more or a majority of
535 water users upon any stream or water source, requesting the investigation of the relative rights of
536 the various claimants to the waters of such stream or water source, it shall be the duty of the state
537 engineer, if upon such investigation he finds the facts and conditions are such as to justify a
538 determination of said rights, to file in the district court an action to determine the various rights.
539 In any suit involving water rights the court may order an investigation and survey by the state
540 engineer of all the water rights on the source or system involved.

541 (2) (a) As used in this section, "executive director" means the executive director of the
542 Department of Environmental Quality.

543 (b) The executive director, with the concurrence of the governor, may request that the state
544 engineer file in the district court an action to determine the various water rights in the stream,
545 water source, or basin for an area within the exterior boundaries of the state for which any person
546 or organization or the federal government is actively pursuing or processing a license application
547 for a storage facility or transfer facility for high-level nuclear waste or greater than class C
548 radioactive waste.

549 (c) Upon receipt of a request made under Subsection (2)(b), the state engineer shall file
550 the action in the district court.

551 (d) The request and the action under this Subsection (2) may only address the streams,
552 water sources, or basins reasonably connected to the site or sites in question.

553 Section 13. **Effective date.**

554 If approved by two-thirds of all the members elected to each house, this act takes effect

555 upon approval by the governor, or the day following the constitutional time limit of Utah
556 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
557 date of veto override.

Legislative Review Note
as of 2-8-01 10:39 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel